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ATTORNEY GENERAL

THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

September 16, 1949

Hon. Wm. N. Hensley
Criminal District Attorney
Bexar County
San Antonio, Texas

Opinion No. V-904.

Re: The maximum tax rate
for hospital purposes
and the validity of
time warrants for hos-
pital repairs under
the submitted facts.

Dear Sir:

Reference is made to your request for an opinion which is substantially as follows:

"Under date of June 27, 1949, the County of Bexar, acting through its Commissioners Court, and the City of San Antonio, acting through its Board of Commissioners, entered into a written agreement providing for the operation of the Robert B. Green Memorial Hospital, under the provisions of an act of the 48th Legislature, 1943, p. 691, ch. 383, now codified as Art. 4494i, R.C.S. Prior to said agreement, the Robert B. Green Memorial Hospital was operated by the County of Bexar under the provisions of an act of the 49th Legislature, 1945, p. 466, ch. 295, now codified as Art. 4437a, R.C.S.

"Under the terms of Art. 4437a, the Commissioners' Court was authorized to levy a tax of not over twenty cents on the valuation of One Hundred Dollars, while under the terms of Art. 4494i, cities or towns and counties are authorized to levy and collect a tax not to exceed ten cents per One Hundred Dollars valuation on the property subject to taxes therein.

"Since Bexar County and the City of San Antonio are now operating said Robert B. Green Memorial Hospital jointly under the provisions of Art. 4494i, R.C.S., kindly furnish us with your opinion as to the maximum legal rate of taxation which the Commissioners' Court may now lawfully levy for the maintenance and operation of said hospital.

"January 3, 1949, we issued \$100,000.00 in warrants, \$15,000.00 to be used to repair the old part of the Tuberculosis Hospital and Clinic of the Robert B. Green Memorial Hospital at Southton, Texas.

"Since the date these warrants were issued, the hospital has been brought under the provisions of Art. 4494i and the management and funds of said hospital turned over to the Board of Managers thereof to operate as a City-County Hospital. As a result, the bonding house which has contracted to buy these warrants has now questioned the validity of the same, contending that since the Board of Managers is given full power to erect and repair the hospital, and since only the Commissioners Court can issue warrants, that they are invalid warrants. They are, therefore, refusing to go through with the contract pending receipt of an opinion from the Attorney General.

"Can the Commissioners Court legally issue and sell these warrants for the purpose of repairing said hospital, while said hospital is being managed under the provisions of Art. 4494i?"

In your request for an opinion you have detailed the history of the Robert B. Green Memorial Hospital immediately before it became a City-County Hospital, the circumstances of the consolidation and the history of the same since the consolidation, which for the sake of clarity will be set out in this opinion, and is as follows:

"The hospital had been operated since 1914 under the provisions of Chapter 5, Title 71, R.C.S., Articles 4478 et seq. In that year, 1914, under the provisions of Article 4492, the County and City contracted to operate said hospital jointly for a term of forty years. Both the City and County issued bonds in the amount of \$125,000.00 to finance the establishment of same. Small amounts are still due on both sets of bonds. The city ceased to comply with the terms of that contract on about the year 1929, and the county has been operating same alone ever since.

Earlier this year, 1949, the city deeded all its interests to and title in the hospital to the county, and the contract referred to above was abrogated, and the county assumed full ownership in law, as well as continuing to exercise full control in fact.

"The tax rate for the support of the hospital for the year 1949 was set at 18.9¢ under the provisions of Article 4437a. This levy had been previously authorized about 1945 by a vote of the people. The county budget was set up accordingly, and said tax levy has produced in the neighborhood of \$400,000.00, which amount has proved itself altogether inadequate to fully and effectively operate said hospital. As a result, the hospital has been almost completely closed during a portion of this year, and only partially open during most of it.

"As a result, negotiation was opened between the County and City authorities whereby an agreement was reached between them for city participation in the operation of a joint City-County Hospital under the provisions of Article 4494i.

"As a result, on June 27, 1949, by its order, the Commissioners Court passed and adopted an ordinance passed and adopted by the City of San Antonio on June 16, 1949, (a copy of which is attached hereto and marked 'Annex 1'), and at that time the hospital became a joint City-County Hospital under the provisions of Article 4494i, without, however, effecting any transfer of title to the realty, which remains in the county."

Article 4494i, V.C.S., is in part as follows:

"Section 1. Any county of the State and any incorporated city or town within such county acting through the Commissioners Court of such county and the governing body of such city or town, may jointly establish, erect, equip, maintain and operate a hospital or hospitals for the care and treatment of the sick, infirm, and/or injured; and for the purposes

of establishing, erecting, equipping, maintaining and operating such a hospital or hospitals, the Commissioners Court of any county and the governing body of any city or town within such county may, by resolution or other appropriate action, confer upon, delegate to and grant to a Board of Managers, as hereinafter provided, full and complete authority to establish, erect, equip, maintain and operate such hospital or hospitals. Such cities or towns and counties that have heretofore issued and sold bonds for the specific purpose of jointly establishing, erecting, equipping, maintaining and operating such joint county-city hospital may finance such hospital or hospitals out of general revenues and are each, respectively, hereby authorized to levy and collect a tax, not to exceed ten (10) Cents per one hundred dollar valuation on the property subject to taxes therein, for such purposes." (Emphasis added)

Article 4437a, V.C.S., is in part as follows:

"Section 1. That all counties in Texas having a population of 200,000 or more inhabitants as shown by the last preceding Federal Census, in which are established hospitals jointly owned and operated by any city and county, in which said hospital is located, the said counties or cities under the terms of a mutual agreement, and not otherwise, are hereby authorized to designate either the county or city government for the purpose of taking over the entire ownership and control of such hospitals upon such terms as may be mutually agreed upon between the city and county owning such hospitals and operating the same, and providing further that such portions of the tax hereinafter referred to shall, if voted by a majority of the qualified voters, be used to take care of the interest and sinking fund required by law on all outstanding bonds of the city or county heretofore issued which have been incurred against the building or maintenance of said hospitals or that may hereafter be issued. That in case it is determined by said mutual agreement for the city to take over the said hospitals and

operate the same, the board of managers may be appointed by the governing body of the city in accordance with the terms of its charter or in accordance with its judgment.

"Sec. 3. A direct tax of not over 20¢ on the valuation of \$100.00 may be authorized and levied by the Commissioners Court of such county for the purpose of erecting buildings or other improvements and for operating and maintaining such hospital; provided that all such levy of taxes shall be submitted to the qualified taxpaying voters of the county, and a majority vote shall be necessary to levy the tax. Successive elections may be held to authorize additional taxes hereunder provided the total tax shall not exceed the maximum of 20¢ per \$100.00 valuation, as hereinabove provided." (Emphasis added)

Prior to its amendment in 1945, Article 4437a provided for a direct tax of not over 10¢ on the valuation of One Hundred Dollars (\$100.00) to be levied by the Commissioners' Court for the purpose of erecting buildings and for maintaining hospitals upon approval of the qualified taxpaying voters by a majority vote. The amendment to Article 4437a by the Acts of 1945, 49th Legislature, provided for a direct tax of not more than 20¢ on the valuation of \$100.00 to be levied by the Commissioners' Court for the same purpose. The condition contained in Article 4437a is "established hospitals jointly owned and operated by any city and county, in which said hospital is located, the said counties or cities under the terms of a mutual agreement, and not otherwise, are hereby authorized to designate either the county or city government for the purpose of taking over the entire ownership and control of such hospital upon such terms as may be mutually agreed upon." In other words, if a tax of 20¢ on the \$100 valuation is levied by the county the hospital must be one in which the governing authority has been delegated to either the city or county. Your factual recitation reflects that Robert B. Green Memorial Hospital is now operating under Article 4494i pursuant to an agreement between the City of San Antonio and the County of Bexar. This being true, we agree with your conclusion that such hospital is now operated under the joint management of the city and county and is therefore limited to a 10¢ levy on the \$100

valuation by the city and by the county, respectively. A hospital operated jointly by a city and county is not a county hospital. Glasscock v. Wells, 171 S.W. 782 (Tex.Civ.App. 1914, error ref.).

Article 4494i provides that such Act is cumulative of all other Acts. Article 4437a provides that the section relating to tubercular hospitals only is cumulative of all other Acts. It is contended that a tax of more than 10¢ on the \$100 valuation may be levied by the County of Bexar. Webster defines "cumulative" to mean "that which augments by addition; that is added to something else." Articles 4437a and 4494i are cumulative only as to those operations within the same category. It is our opinion that these Articles refer to two distinct types of operations of hospitals, and are not cumulative of each other.

Since Robert B. Green Memorial Hospital is operated jointly by the city and county under Article 4494i, we agree with your conclusion that the provisions of Article 4437a are not applicable. If such hospital were a city-county hospital where the authority to control and manage had been delegated to either, then Article 4437a would control. Therefore, it is our opinion that the maximum tax levy that may now be levied by Bexar County for hospital purposes is a tax not to exceed 10¢ on the \$100 valuation.

We now turn to your second question regarding the time warrants. Article 4494i provides that the governing authorities of a hospital may delegate and grant to a Board of Managers full and complete authority to establish, erect, equip, maintain and operate such hospital. This having been done, the question is now presented as to whether the Commissioners' Court can legally issue and deliver the time warrants authorized by the Commissioners' Court on January 3, 1949, prior to the effective date of House Bill No. 106, Acts 51st Legislature, for the purpose of repairing Robert B. Green Memorial Hospital while the same is operated under Article 4494i.

In the case of Adams v. McGill, 146 S.W.2d 332 (Tex.Civ.App. 1941, error ref.), the Court said:

" . . . a county, subject to the express restrictions imposed by the Constitution and general laws, has the power to

issue time warrants in payment for improvements it is expressly authorized to construct, provided that the applicable regulations relating to the issuance of such warrants be observed." (Underscoring ours).

This office stated in Opinion No. V-779, dated February 23, 1949, that a Commissioners' Court under the facts outlined therein has authority to issue interest bearing time warrants for the purpose of establishing and equipping a county hospital. In this connection, Article 4494i provides that Boards of Managers shall have authority to disburse and pay out funds set aside by such County and City for purposes connected with such hospital. Further, it is provided that in connection with the erection and equipping of such hospital, the Board of Managers shall have the authority to determine the manner of expending any funds that may have been provided for such purpose, whether by the issuance of bonds or other obligations or by appropriations. While the Board of Managers has exclusive authority in the manner of expending funds, it is our opinion that a Commissioners' Court would not be precluded from issuing time warrants. Such warrants, presumably, would be issued at the request of the Board of Managers for the making of repairs which said Board in its discretion determined should be made. As only the Commissioners' Court is empowered under the Constitution and statutes to levy taxes for hospital purposes, only that agency could issue time warrants and levy a tax for the payment of the interest and principal thereof. We think that Article 4494i, in providing that complete authority is vested in the Board of Managers, would require that time warrants would be issued by the Commissioners' Court at the instance of the Board of Managers for the repairs designated by the Board. The Commissioners' Court would enter such contracts and issue the time warrants in accordance with the request of the Board, assuming, of course, that the purpose is proper. Therefore, in answer to your question, the Commissioners' Court of Bexar County may legally issue and deliver the time warrants in question for the purpose of repairing Robert B. Green Memorial Hospital provided the provisions of the "Bond and Warrant Law" (Art. 2368a, V.C.S.) are met, and provided, further, that the county has the taxing power to do so.

Subsequent to the receipt of your request you

have submitted additional questions which are as follows:

"May a bond be required of said Board for the protection of the County against the loss of such County funds transferred to said Board, and, if not, whether or not in the event of the possible loss or dissipation of said funds by said Board, any personal or official liability for said loss would be incurred by the Commissioners' Court as a body, or by any of the members thereof as individuals, in either their private or official capacities, through the possible wasteful or wrongful action of such Board resulting in the loss of part or all of said hospital monies?"

We find no statute which requires a member of a Board of Managers of a city-county hospital operating under the provisions of Article 4494i to execute a bond conditioned against the loss of county funds transferred to said Board. The Board members will be liable for any misapplication of funds, and should follow Article 2549 concerning bonded depositories, and all other applicable statutes relating to the use and care of public funds.

Generally speaking, Commissioners' Courts would not be liable for the official acts of a Board of Managers of a city-county hospital. Their bonds are conditioned on their own faithful performance. However, this matter resolves itself into a factual situation, and therefore we are precluded from answering the same.

SUMMARY

The maximum tax rate that may be levied by the Commissioners' Court of Bexar County for hospital purposes in connection with the joint operation of the Robert B. Green Memorial Hospital with the City of San Antonio, pursuant to the provisions of Article 4494i, Vernon's Civil Statutes, is a tax not to exceed 10¢ on the \$100 valuation.

The Commissioners' Court of Bexar County may legally issue and deliver the time warrants authorized by the Commissioners'

Court on January 3, 1949 (prior to the effective date of House Bill No. 106, Acts 51st Legislature), for the repair of Robert B. Green Memorial Hospital provided the provisions of the Bond and Warrant Law are met, and provided, further, the county has the taxing power to meet the requirements thereof.

The Board of Managers of a city-county hospital operated pursuant to the provisions of Article 4494i, Vernon's Civil Statutes, are not required by such statute to execute a bond conditioned against the loss of county funds transferred to such Board. Board members are liable for any misapplication of funds and should follow all applicable statutes relating to the use and care of public funds.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

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By

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APPROVED

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